A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No.2159/2000

Santosh Sharma

Vs.

State of Chhattisgarh

Judgment for consideration

Sd/-

JUDGE
8-11-2006

Hon'ble Shri Justice L.C. Bhadoo

Sd/-
L.C. Bhadoo
Judge

Post for 14-11-2006

Sd/-
V.K. Shrivatava
Judge

(28)

HIGH COURT OF CHHATTISGARH AT BILASPUR

(Division Bench)

Coram : **Hon'ble Shri L.C. Bhadoo &**
Hon'ble Shri V.K. Shrivastava, JJ

Criminal Appeal No. 2159/2000

APPELLANT — Santosh Sharma aged 33 years, s/o. Devcharan Sharma, resident of Kharod Thana Shivrinarayan, Tahsil Janjgir, Dist. Janjgir Champa (CG).

Versus

RESPONDENT — State of Chhattisgarh, through the Dist. Magistrate Janjgir, Dist. Janjgir Champa (CG).

Present :- Smt. Indira Tripathi, learned counsel for the appellant.

Shri G.D. Vaswani, learned Additional Public Prosecutor with Shri D.C. Pande, learned Panel Lawyer for the State.

JUDGMENT

(Delivered on 14 November, 2006)

The following judgment of the Court was delivered by **Vijay Kumar Shrivastava, J.**

The Additional Sessions Judge, Janjgir, Sessions Division Bilaspur, found the appellant – Santosh Sharma guilty of the offence punishable under Section 302 of the Indian Penal Code. The appellant was sentenced to undergo imprisonment for life with fine and default stipulation vide judgment of conviction and order of sentence dated 25/07/2000 passed in Sessions Trial No. 270/98.

2) Prosecution version as unfolded during trial, in brief, is that the appellant is nephew of Chudamani Sharma and Chudamani Sharma is father-in-law of Virendra Kumar. Appellant had an eye over the property of Chudamani Sharma. Virendhra Kumar after his marriage used to visit

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his in-law's house off and on, therefore, appellant suspected that Chudamani Sharma would give his property to Virendra Kumar, therefore, appellant was keeping animosity with Virendra Kumar and his family members. In 1997 appellant assaulted Virendra Kumar who reported the matter to Police. Ku. Sarita Mishra (since deceased) younger sister of Virendra Kumar on 12/04/1998 went to Kausadi pond to take bath. When she was bathing appellant carrying a battle-axe came there and attacked Ku. Sarita Mishra. He gave several blows on Ku. Sarita Mishra by that battle-axe. Ku. Sarita Mishra received severe injuries on her body and instantaneously died on the spot. Appellant after getting the battle axe washed fled away from there.

3) Vijay Kumar Mishra another brother of deceased Sarita Mishra was informed by Santosh Pandey and Santosh Mishra that appellant killed his sister Ku. Sarita Mishra, therefore, he went to the place of occurrence and saw his sister Sarita Mishra who was dead having several injuries on her head, neck and other parts of the body and blood was oozing from those injuries. He went to the Police Station: Shivrinarayan, lodged merg intimation and first information report. N. Khais Sub-Inspector of Police recorded merg intimation and first information report and rushed to place of occurrence to conduct the inquest. He after serving notice to witnesses and in presence of those witnesses conducted inquest, prepared inquest report and forwarded the dead body of Sarita Mishra for autopsy to Government hospital, Shivrinarayan. From the place of occurrence he collected blood stained earth, plain earth, skull hair and one Motimala belonging to Sarita Mishra and seized all those articles. He recovered one battle axe and one small towel from the possession of the appellant. He recorded the statements of witnesses under Section 161 of the Cr.P.C.

4) Dr. N. Prasad and Dr. R.S. Prabhakar conducted autopsy. They found fifteen injuries on her body and opined that the cause of death was coma due to brain hemorrhage and skull fracture and death was homicidal in nature. They described all those injuries in their report, collected blood stained clothes and ornaments of the deceased and along with those, sent their report to Police Station. Spot map was prepared by Patwari. The battle axe recovered from the possession of the appellant was sent to medical officer for examination and opinion. Dr. M. Prasad examined the battle axe and opined that the injuries found on the body of the deceased Ku. Sarita Mishra could have been caused by the seized weapon. All the articles recovered and seized were sent to Forensic Science Laboratory, Sagar for examination from where analysis report has been received. After completion of investigation charge sheet was led in the Court of Judicial Magistrate First Class, Janjgir who committed the case to the Court of Sessions for trial.

5) Trial Court, framed charge under Section 302 of the I.P.C. against the appellant, the same was read over and explained to him who abjured the guilt. It appears that apart from innocence, appellant also pleaded defence of insanity.

6) Learned trial Court relying on medical evidence of Dr. N. Prasad (PW/5), Dr. R.S. Prabhakar (PW/6) held that the death of Sarita Mishra was caused by inflicting various injuries on her body with iron battle axe and placing reliance on eye-witnesses Vishwanath (PW/2), Chandrika Bai (PW/3), Dinesh Kuamar Yadav (PW/4), Ku. Sushila (PW/8) and Rajendra Kumar Sharma (PW/9) held that the appellant attacked and assaulted Ku. Sarita Mishra with a battle axe and caused her death. Learned trial Court after appreciating the evidence on record did not accept the defence of the appellant that when the incident took place, appellant was suffering from

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unsoundness of mind and his act falls within the exception as envisaged under Section 84 of the IPC. Learned trial Court holding the appellant guilty for committing offence punishable under Section 302 of the IPC, convicted and sentenced him.

7) Appellant did not dispute the ante mortem injuries found on the body of deceased Sarita Mishra and her death to be homicidal in nature. Even otherwise, from the statements of Dr.N. Prasad (PW/5) and Dr. R.S. Prabhakar (PW/6) and autopsy report (Ex.P/4) proved by both these witnesses, it was established that Sarita Mishra sustained following injuries and succumbed to those. Cause of her death was coma due to brain hemorrhage and skull fracture.

1) Lacerated wound with evulsion of skull over occipital and parietal junction area in the size of 15 x 8 cm, fractured parietal bone seen through the wound.

2) Lacerated wound scalp right side of occipital bone in the size of 5 x 2 cm fractured occipital bone seen through the wound.

3) Incised wound left side of occipital bone in the size of 6 x 2 cm fractured line seen and felt through the wound on palpation.

4) Incised wound left temporal region in the size of 5 x 1 x ¼ c.m.

5) Incised wound in the size of 3 x ½ cm x ¼ cm lateral side of left eye.

6) Incised wound in the size of 2 x ½ x ¼ cm above left eye.

7) Incised wound in the size of 2 cm x ½ x ¼ cm below left eye.

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8) Incised wound left side of neck below left ear horizontally placed in the size of 3 x 1 x 1 cm.

9) Incised jaw wound in the size of 2 cm x 1 cm x ¼ cm above left lateral to nose.

10) Incised wound mid frontal region in the size of 3 x 1 cm x ½ cm.

11) Incised wound lateral side of right eye in the size of 2 x 1 cm x 1 cm.

12) Incised wound elbow joint lateral aspect obliquely placed in the size of 5 x 3 cm fracture of upper 1/3rd of radius.

13) Left hand incised wound in the size of 6 x 3 cm bony deep fracture.

14) 5th metacarpal shaft incised wound lateral arm posterior aspect in the size of 5 x 2 x 2 cm.

15) Incised wound left posterior side of chest in the size of 2 x ½ x ¼ cm.

8) The incident has been witnessed by Vishwanath (PW/2), Chandrika Bai (PW/3), Dinesh Kuamar Yadav (PW/4), Ku. Sushila (PW/8) and Rajendra Kumar Sharma (PW/9). Vishwanath (PW/2) in his statement has categorically deposed that he heard "*Bachav Bachav*", the sound was coming from bathing place (Barghat) of the pond, when he saw he found that the appellant was assaulting Ku. Sarita Mishra with iron battle axe (Pharsa) as a result of which she fell down into water. Appellant did not stop, but continued assaulting her. Chandrika Bai (PW/3) has deposed in her statement that appellant pushed Sarita Mishra into water and started assaulting her with a battle axe. Sarita Mishra raised alarm "*Bachav Bachav*". Appellant after assaulting her fled away from the place of occurrence. Dinesh Kumar Yadav (PW/4) in his statement has deposed

that he heard "Bachav Bachav", therefore, he went on bed of the pond and saw that appellant was assaulting Sarita Mishra with Tabbal. Sarita Mishra receiving injuries fell down inside the water. Ku. Sushila (PW/8) in her statement has deposed that Sarita Mishra was taking bath in pond, appellant came there, pushed her inside the water and assaulted her with Pharsa (battle axe). Rajendra Kumar Sharma (PW/9) in his statement has deposed that Sarita Mishra was washing her clothes, appellant came, pushed her inside the water and assaulted her with Pharsa. All these witnesses have been cross-examined at length. Except minor discrepancies and minor contradictions that was natural, nothing has been brought on record. After minute appreciation of the statements of all these witnesses, we are of the opinion that in cross examination nothing material has been elicited which may lead their statements untrustworthy or impeachable even they have no grudge to falsely implicate the appellant in the crime.

9) From the statements of Doriwal (PW/10), Mukunda (PW/12) and N. Khais (PW/15), it has been proved that appellant was found with a battle axe and from his possession battle axe was seized. The seizure memo is Ex,.P/8. From the statements of N. Khais (PW/15) and Dr. N. Prasad (PW/5), it has been proved that the seized battle axe was sent for medical examination and Dr. N. Prasad (PW/5) on examination opined that the injuries found on the body of Sarita Mishra could have been caused by the seized battle axe. First information report is Ex.P/1 and Merg intimation is Ex.P/2. Both these documents have been proved by Vijay Kumar Mishra (PW/1) and N. Khais (PW/15). Soon after the incident both these reports have been lodged alleging involvement of the appellant in the crime.

10) Ocular evidence which itself is unimpeachable is duly corroborated with recovery of weapon from the possession of the appellant and merg

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intimation as well as first information report. Therefore, relying on the statements of eye-witnesses duly corroborated with merg intimation first information report, medical evidence and recovery of weapon, we are of the considered opinion that the appellant with a battle axe causing many injuries on the body of Sarita Mishra who was unarmed and undefended woman caused her death.

11) Virendra Kumar (PW/13) in his statement has deposed that the appellant is nephew of Chudamani Sharma. Appellant had an eye over the property of Chudamani Sharma, but when after his marriage he started visiting his in-law's house off and on, appellant suspected that Chudamani Sharma would give his property to him (Virendra Kumar), therefore, appellant started keeping animosity with him and his family members and as a result of that in 1997 appellant also assaulted him. Ku. Sarita Mishra is his younger sister. Nothing has been elicited in his cross-examination so as to discredit his statement. Therefore, from his statement, this much has been brought on record that appellant had animosity with Vidrendra Kumar and his family members and that may be a motive for the murder of Sarita Mishra.

12) Learned counsel for the appellant vehemently argued that the appellant is entitled for protection under Section 84 of the IPC as he was suffering from Paranoid Schizophrenia and because of the disease he was a man of unsound mind and by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. Learned counsel for the appellant placed her reliance on the judgment rendered by Hon'ble the Apex Court in ***Dahyabhai Vs. State of Gujarat, reported in AIR 1964 SC 1563 (V 51 C 210)*** and judgment rendered by Hon'ble the Bombay High Court in ***Govind Ramchandra Jadhav Vs. State of Maharashtra***, reported in

1996 Criminal Law Journal 4186. On the contrary, learned counsel for the State argued that at the time of occurrence appellant was not suffering from unsoundness of mind, therefore, he was not entitled for any protection under Section 84 of the IPC.

13) Section 84 of the IPC reads as below"

> ***"Section 84. Act of a person unsound mind. –*** *Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law"*

14) With regard to insanity, every person is presumed to be sane, until the contrary is proved and to establish the defence of insanity it must be clearly proved that at the time of committing the offence the accused was labouring under such a defect of mind that he was unable to know the nature and quality of the act, that was done by him and to bring his case under exception of Section 84 of the IPC, he is bound to prove the existence of circumstances bringing his case within exception as envisaged under Section 84 of the IPC, and the provisions contained in Section 105 with illustration (a) of the Evidence Act which is reproduced below are attracted in such cases.

> ***"Section 105. Burden of proving that case of accused comes within exceptions.-*** *When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, 1860 (45 of 1860) or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.*
>
> ***Illusions***
>
> *(a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.*
>
> *The burden of proof is on A.*

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15) Hon'ble the Apex Court rendering judgment in ***Dahyabhai*** (supra) dealt with the provisions contained in Section 84 of the IPC and Section 105 of the Evidence Act and held as below:

> *"© Penal Code (1860) S.84 – Plea of insanity – Proof – Circumstances which preceded, attended and followed the crime to be considered.*
>
> *When a plea of legal insanity is set up, the Court has to consider whether at the time of commission of the offence the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. The crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of S.84 of the Penal Code can only be established from the circumstances which preceded, attended and followed the crime.*
>
> *(e) Penal Code (1860) S.84 – Plea of insanity – Proof – Accused giving many stabs to kill unarmed and undefended woman.*
>
> *Many sane men give more than the necessary stabs to their victims. The number of blows given might perhaps reflect his vengeful mood or his determination to see that the victim had no escape. One does not count his strokes he commits murder. This does not necessarily prove that the accused was doing the act under some hallucination.*
>
> *(g) Evidence Act (1872) Ss. 101, 105, 4 – Case of homicide - Plea of insanity – Burden of proof – (S) AIR 1956 Nag 187 Overruled.*
>
> *It is fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and, therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution therefore, in a case of homicide shall prove beyond reasonable doubt that the accused caused death with the requisite intention described in S.299 of the Penal Code. This general burden never shifts and it always rests on the prosecution. But, under S.105 of the Evidence Act the burden of proving the existence of circumstances bringing the case within the exception lies on the accused; and the court shall presume the absence of such circumstances. Under S.105 of the Evidence Act, read with the definition of "shall presume" S.4 thereof the Court shall regard the absence of such circumstances as proved unless, after considering the matters before it, it believes that the said*

circumstances existed or their existence was so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that they did exist. To put it in other words, the accused will have to rebut the presumption that such circumstances did not exist, by placing material before the court sufficient to make it consider the existence of the said circumstances so probable that a prudent man would act upon them. The accused has to satisfy the standard of a "prudent man". If the material placed before the Court, such as, oral and documentary evidence, presumptions, admissions or even the prosecution evidence, satisfies the test of "prudent man", the accused will have discharged his burden. The evidence so placed discharged may not be sufficient to discharge the burden under S.105 of the Evidence Act but it may raise a reasonable doubt in the mind of a judge as regards one or other of the necessary ingredients of the offence itself. It may, for instance, raise a reasonable doubt in the mind of the judge whether the accused had the requisite intention laid down in S.299 of the Penal Code. If the judge has such reasonable doubt, he has to acquit the accused, for in that event the prosecution will have failed to prove conclusively the guilt of the accused. The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions: (1) the prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea; and the burden of proving that always rests on the prosecution from the beginning to the end of the trial, (2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by S.84 of the Penal Code: the accused may rebut it by placing before the court all the relevant evidence – oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings; (3) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged."

16) The judgment rendered by Bombay High Court in ***Govind Ramchandra Jadhav (supra),*** it has been held that accused suffering from schizophrenia and prosecution unable to prove requisite *means rea*,

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appellant acquires entitlement for the benefit of provisions of Section 84 of the IPC and becomes entitled for acquittal.

17) From the provisions of law and law laid down by Hon'ble the Apex Court, it is manifest that if plea of insanity has been raised, the Court has to consider whether at the time of commission of offence, the accused by reason of unsoundness of mind was incapable of knowing the nature of the act or that he was doing what was right or what was wrong. For ascertaining the state of mind of the accused at the crucial point of time, circumstances preceded attended and followed are required to be considered. If from the material placed before the Court, the existence of said circumstances was so probable that a prudent man ought, under the circumstances of the particular case, to act, the burden placed on accused for taking benefit of exception of Section 84 of the IPC stands discharged.

18) It is pertinent to mention that even if the evidence placed on record is not sufficient to discharge the burden under Section 105 of the Evidence Act, but may raise a reasonable doubt in the mind of judge as regards one or other necessary ingredients of the offence including the *mens rea* of the accused, the accused became entitled for acquittal.

19) Following passage from article on "The symptoms of schizophrenia" available in internet at website http://www.psychiatry24x7.com/bgdisplay.jhtml?itemname=schizophrenia_symptoms&p... (accessed on 10/29/2006) will assist in appreciating the plea of insanity taken by the appellant.

> *"The symptoms of schizophrenia usually vary over time. They worsen during periods of relapse and improve during periods of remission. Some people*

have only one psychotic episode; others experience many episodes, but lead relatively normal lives in between episodes and appear emotionally healthy and stable. However, people with chronic schizophrenia, or continuous or recurring symptoms, usually do not recover fully. They require long-term treatment, which tends to include relatives and friends to control the symptoms.

The media frequently link mental illness with violent behaviour. However, unless they displayed violent behaviour before the onset of their illness or have substance abuse or alcohol problems, people with schizophrenia are not really prone to violent behaviour. Most individuals with schizophrenia are not violent at all, but tend to be withdrawn and prefer to be left alone."

20) In the cross examination of Vijay Kumar Mishra (PW/1), it is clear that instead of suggesting a plea of insanity, appellant took a defence of animosity. In cross examination of Vishwanath (PW/2), Chandrika Bai (PW/3), Dinesh Kumar Yadav (PW/4), appellant did not take the defence of insanity. For the first time on 24/04/2000 when the witness Ku. Sushila was adduced in evidence, during her cross-examination, plea of insanity was introduced. In cross-examination Ku. Sushila (PW/8) stated that before incident took place appellant's behaviour was mad type, therefore, he started moving here and there carrying a battle axe. Rajendra Kumar Sharma (PW/9) in his cross examination has accepted that since 10-15 days before the date of incident appellant carrying a battle axe was wandering. Mukund (PW/12) also accepted in cross examination that before 10 – 15 days from the date of incident appellant was carrying a battle axe and whenever he went to take bath he was keeping the battle

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axe. From the above statement, if taken to be true, only this circumstance has been brought before the Court that earlier to the date of incident appellant carrying a battle axe was taking round in the village. It is not an unusual behaviour, which may lead to suggest that appellant was under the influence of unsoundness of his mind.

21) Dr. Prakash Narayan Shukla (DW/1) in his statement deposed that appellant was suffering from Paranoid Schizophrenia, for the first time for treatment he was brought before him on 16/07/1992 and for the last time he was brought before him on 25/03/1997. In cross examination he has stated that he is unable to state the mental condition of the appellant after 25/03/1997. Incident took place on 12/04/1998 and this witness has examined the appellant before a year, therefore, from his statement on the date of occurrence what was the state of mind of the appellant cannot be ascertained. From the statement of another witness DW/2 Chedilal, it is clear that he never saw the appellant doing any wrong, he never saw the appellant quarrelling with any one and he never saw the appellant murmuring, abusing or shouting against any one.

22) Appellant was arrested on 12/04/1998, but at that time, he did not take plea of insanity. From the record of trial Court, it is evident that when he was produced before the Court he made request for adjournment for appointing an advocate for his defence. When charge was framed and explained to him, he abjured the guilt. On 16/08/1999 he filed an application for proper treatment complaining increase of his heart rate and shivering of his body. Even by that time appellant did not disclose the fact that he was suffering from Paranoid Schizophrenia or any other mental disease.

23) From the judgment of the trial Court in para 38, it is also clear that on appellant's complaint that he was suffering from mental disease he was sent to Raipur and Jabalpur for treatment, but at both the places it was found that he is anemic and is unable to work and rest of the conditions was found satisfactory. During trial after close of prosecution witnesses his examination was done by the trial Court and the appellant very wisely and after understanding questions replied all the questions. Even in his examination he did not say that he was insane, but he stated that all the witnesses have implicated him due to animosity.

24) Mukund (PW/12) in his statement has stated that he saw the appellant washing Tabbal (battle axe) in the pond and when he saw him he rushed from there and entered inside his house. In cross examination he has made clear that when appellant after washing the weapon was drying it, he saw the appellant. His statement does not suffer from any infirmity and from his statement it is evident and established that after the incident appellant washed and dried the weapon and after seeing the witness Mukund, he carrying the weapon went to his house.

25) In the instant case, no doubt, a year back appellant was treated by Dr. Prakash Narayan Shukla (DW/1) for the disease Paranoid Schizophrenia. Before the date of incident appellant was seen for a number of days moving here and there carrying a battle-axe in his hand in the village. After the incident, there is no evidence to establish that appellant met with any episode of schizophrenia. Appellant during trial for a long period did not disclose that he was suffering from mental disease. He did not take defence of insanity during cross-examination of number of eyewitnesses. Earlier he complained increase of his heart rates and shivering of his body, later on after a long time at his instance he was got

examined by Psychiatrist, but nothing suggestive of his unsoundness of mind was reported.

26) Here in the instant case, when it is clear that appellant had an eye over the property of his uncle, and he suspected that his uncle is going to give his property to his son-in-law – Virendra Kumar, therefore, he kept animosity with him and his family members and a result of that in 1997 he also assaulted Virendra Kumar who reported the matter to Police. On the date of incident he went to the pond carrying a battle-axe, he mercilessly and violently assaulted many times with a battle-axe to Ku. Sarita Mishra and caused her death on the spot. Thereafter, he washed the weapon, dried it and went to his house. On the same day the weapon was seized from him and he was arrested. No one by that time or after-words for a long time disclosed that appellant was insane or was medically treated earlier for mental disorder. Even for a long time no defence of insanity was taken by the appellant during cross examination of a number of eye-witnesses. During the trial and till date appellant did not receive any stroke of schizophrenia. On the contrary, after examination it was found that he is only weak and unable to work, therefore, taking into consideration the circumstances preceded the incident, attended and followed it cannot be said that the appellant killed Ku. Sarita Mishra in the passion of unsoundness of mind. For a prudent person, it is not possible to accept that when appellant killed Sarita Mishra, he was under violent episode of mental insanity, therefore, the appellant does not deserve the benefit of Section 84 of the IPC.

27) From the facts, circumstances and evidence available on record, we are of the considered opinion that prosecution succeeded in proving all the ingredients including *mens rea* required to be proved for the alleged offence.

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28) In the result, the appeal being devoid of merit is liable to be dismissed and is accordingly dismissed.

Sd/-
V.K. Shrivatava
Judge

14/11/2006

Sd/-
L.C. Bhadoo
Judge

Raju